IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

RSA.No. 416 of 2007()

(AGAINST THE JUDGMENT AND DECREE DATED 8/2/2007 IN AS.269/2006 of D.C. & SESSIONS COURT,KOLLAM OS.119/1994 of MUNSIFF COURT, PUNALUR)
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APPELLANT/DEFENDANT:

G.THANKAPPAN, S/O.GOPALAN, PLAVILA VEEDU, MATHURAPPA MURI, ARACKAL VILLAGE, KOLLAM.

BY ADV. SRI.T.K.M.UNNITHAN
SRI.V.JAYAKUMAR

RESPONDENT/PLAINTIFF:

RADHAMONY, RAJESH BHAVAN, MATHURAPPA MURI, ARACKAL VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL(CAVEATOR)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 416 OF 2007

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DATED THIS THE 5TH DAY OF JUNE, 2007

JUDGMENT

Defendant in O.S.119 of 1994 on the file of Munsiff Court, Punalur is the appellant. Plaintiff therein is the respondent. Respondent instituted the suit seeking a decree for declaration of a title and for recovery of possession of damages. The plaint B schedule property is two rooms in the building in plaint A schedule property. The case of the respondent is that plaint A schedule property belongs to him under Ext.A1 sale deed and he has title to the property as it was purchased from Usha the previous owner and the appellant approached Nanu who was looking after the properties and requested to let him the two rooms for a short while agreeing to vacate the same after expiry of six months and he started storing cement and fertilizers therein and as a result the building got damaged and the continuation of occupation of the appellant on the expiry of the period of six months is illegal and as respondent has title to the property, he is entitled to the decree for declaration of title and recovery of possession and damages. Appellant in the written statement contended that the property originally belonged to

Usha and there was an oral agreement for sale between Usha and her husband who are residing at Delhi to sell B schedule property to him and Rajendran, the brother of Usha was looking after the properties and Usha had informed the appellant her intention to sell and appellant expressed the desire to purchase and accordingly as directed by Usha, appellant approached Rajendran in March 1987 and B schedule property was taken on rent and he carried out construction and maintenance work of the same and meanwhile Usha and her husband agreed to sell the property for a consideration of Rs.24,920/- and appellant paid the entire amount in three instalments through Rajendran and from March 1991 he has been in possession of B schedule property on the basis of agreement for sale and the original lease is not in force and respondent has no title to the property and he is not entitled to the decree sought for.

2. The learned Munsiff framed the necessary issues. On the evidence of Pws 1 to 3 and Exts.A1 to A7 and Dws 1 to 4 and B1 to B4, learned Munsiff disbelieved the case of oral agreement for sale and upheld the title set up by respondent under Ext.A1 and granted a decree for declaration of title and recovery of possession. Appellant challenged the decree and judgment

before District Court, Kollam in A.S.269 of 2006. The learned District Judge on re-appreciation of evidence, confirmed the finding of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant and learned counsel appearing for respondent who lodged a caveat were heard. The arguments of the learned counsel appearing for appellant was that courts below did not properly appreciate the evidence adduced by appellant in support of the case for the agreement for sale. It was argued that the appellant and Usha are close relatives and she is residing at Delhi and in such circumstances, no written agreement was entered into and as per the oral agreement, Usha and her husband agreed to sell B schedule property for a total consideration of Rs.24,920/- and by three instalments the whole amount was paid to Rajendran as instructed by Usha and courts below should have found that Ext.A1 sale deed obtained by respondents is vitiated by fraud and respondent did not get any title to the property thereunder.

4. Learned counsel for the appellant argued that apart from the oral evidence Ext.B1 letter sent by Usha to the appellant discloses existence of an oral agreement for sale and

in the light of Ext.B1 and the oral evidence, courts below should have upheld the case of the appellant and should not have granted the decree in favour of the respondent.

5. Learned counsel appearing for the respondent pointed out that Ext.B1 did not disclose any agreement for sale and the oral evidence was properly appreciated by the trial court and the first appellate court and that factual finding cannot be interfered in exercise of the powers of this court under Section 100 of the Code of Civil Procedure.

6. A copy of Ext.B1 was produced along with appeal memorandum by the appellant. Learned counsel had taken me through Ext.B1 and argued that it refers about the oral agreement for sale. The learned Munsiff and learned District Judge considered Ext.B1 and it was found that Ext.B1 does not disclose any oral agreement for sale. I have gone through Ext.B1 minutely. I cannot agree with the argument of learned counsel appearing for appellant that Ext.B1 discloses an agreement for sale. True, Ext.B1 refers about the meeting between the appellant and Usha and the talk in respect of the shop building. But it does not disclose that an agreement was entered into with the appellant to sell the plaint schedule property. On the other

hand, Ext.B1 discloses that Usha had intimated appellant as per Ext.B1 letter that she had no intention to sell the property to the appellant. It also discloses that if the appellant had paid any amount to Rajendran, it is to be repaid by Rajendran and appellant is entitled to get it back with interest. On reading Ext.B1, I find no reason to interfere with the factual finding of the courts below. What is left is with is only the oral evidence tendered in respect of the oral agreement for sale. The trial court, which had occasion to note and appreciate the **demand** of witnesses, appreciated the evidence in the proper perspective and found that oral evidence in support of the oral agreement for sale is not credible or reliable. The first appellate court also appreciated the evidence in detail and found that evidence did not disclose existence of an oral agreement for sale. I find no substantial question of law involved in the appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-